

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Charles T. Barbarotta,

Case No. 3:17-cr-397

Petitioner-Defendant,

v.

ORDER

United States of America,

Respondent-Plaintiff.

Petitioner Charles T. Barbarotta seeks a certificate of appealability as to my March 8, 2021 Memorandum Opinion and Order denying his motion to correct his sentence under 28 U.S.C. § 2255 and his other related motions. (Doc. No. 26).

A habeas corpus petitioner is not entitled to a certificate of appealability as a matter of right, but must make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The petitioner need not demonstrate he should prevail on the merits. Rather, the petitioner must demonstrate “that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *see also Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000).

Barbarotta’s petition has not met this standard, as controlling precedent from the Supreme Court and the Sixth Circuit Court of Appeals clearly establishes that Barbarotta’s Sixth Amendment right to counsel had not attached at the time of the alleged errors. *See, e.g., United States v. Gouveia*,

467 U.S. 180, 188 (1984) (A defendant's Sixth Amendment right to counsel attaches "at or after the initiation of adversary judicial criminal proceedings – whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.") (quoting *Kirby v. Illinois*, 406 U.S. 682, 689 (1972)); *Turner v. United States*, 885 F.3d 949, 953 (6th Cir. 2018) ("[T]he Sixth Amendment right to counsel does not extend to preindictment plea negotiations.").

Therefore, and for the reasons set forth in my March 8, 2021 Memorandum Opinion and Order, I certify there is no basis on which to issue a certificate of appealability. 28 U.S.C. § 2253; Fed. R. App. P. 22(b).

So Ordered.

s/ Jeffrey J. Helmick
United States District Judge